

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

COMMENTS OF SACRED WIND COMMUNICATIONS, INC.

Sacred Wind Communications, Inc. (“Sacred Wind”)¹ files these comments in response to the Wireline Competition Bureau’s (“Bureau”) Public Notice seeking comment on location adjustment procedures in connection with Alternative Connect America Model (“A-CAM”) I and II support.² The Bureau seeks comments regarding the procedure proposed in its September 2018 Public Notice, soliciting comment on the same issue, with respect to Connect America Fund Phase II (“CAF-II”) auction support recipients.³

Upon close examination of the data for funded locations within the eligible census blocks of its own A-CAM II offer, Sacred Wind identified a significant number of discrepancies between funded and actual locations. In some cases, downward adjustments are needed to reconcile the number of funded locations with a smaller number of actual locations (e.g., an area where several natural gas wells with restricted access each were included as a separately funded location). Sacred Wind generally supports the procedures proposed in the *CAF-II Locations*

¹ Sacred Wind, a regulated local exchange carrier, is a wholly owned affiliate of its holding company, Sacred Wind Enterprises, Inc., also a Class C corporation of New Mexico.

² See *Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offer to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, WC Docket No. 10-90, Public Notice, DA 19-504 (rel. June 5, 2019).

³ *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, WC Docket No. 10-90, Public Notice, DA 18-929 (rel. September 10, 2018) (“*CAF-II Locations Public Notice*”).

Public Notice as applied to A-CAM II, giving recipients a year to submit location data evidence, but we request added measures of flexibility regarding location data sources and timing.

The Bureau should provide flexibility, with respect to geocoding method and sources of location data, to complete a comprehensive review of its funded census blocks (e.g., internal address records, third-party address data, web-based maps, and/or GPS field data collected by the carrier itself). Indeed, Sacred Wind employed a variety of these methods in reviewing the location data in its own A-CAM II offer. In the case of Tribal service areas, such as those served by Sacred Wind, street addresses and reliable commercial geocoding data are often unavailable. The Bureau should give support recipients the flexibility to use such methods provided that recipients can offer details on the source data, application(s), and geocoding method(s) used.

Regarding the timing of challenges, the Bureau should provide at least 30 days for parties to review and respond to challenges. For small businesses such as Sacred Wind, responding to challenges within a 15-day window may be impossible depending on the number and nature of the challenge and geocoding methodology used.

Conversely, Sacred Wind urges the Federal Communications Commission (“FCC” or “Commission”) to allow the Bureau to recognize extenuating circumstances in Tribal areas where the number of actual eligible locations far exceeds the number of funded locations and permit upward adjustments of A-CAM II support accordingly. Following its review of the Bureau’s A-CAM II offer, Sacred Wind discovered a significant shortfall of funded locations relative to actual locations within its eligible census blocks.⁴ Such locations are largely Navajo residential communities that are unserved or underserved and not located within the study area of an unsubsidized competitor.

⁴ Sacred Wind has filed a separate Petition for Waiver and detailed supporting data in connection with requested adjustments to its own A-CAM II offer.

The funded location shortfall in Sacred Wind's A-CAM II offer was substantial, with over 4,700 locations excluded. Even with the A-CAM II Tribal Factor, Sacred Wind's need to continue infrastructure improvements on unserved Tribal lands results in higher opex and capex costs. More troubling, however, is the exclusion of these locations from the A-CAM that has rendered them invisible to the Commission for purposes of bridging the digital divide in rural and Tribal areas. As is, Sacred Wind's A-CAM II offer permits fulfillment of the FCC's voice and broadband performance obligations without ever having to deploy to a single one of these excluded locations.

Like other carriers serving Tribal Lands, Sacred Wind serves many low-income customers who reside in extremely rural and remote areas. The average annual individual income in Navajo, NM is \$6,176, which is 75 percent below the statewide average (\$25,257) and 80 percent below the national average (\$31,177).⁵ Over 42.9 percent of Navajos live under the national poverty level,⁶ the highest poverty rate in the country even among American Indians. Sacred Wind calculates that among the unserved households in the more remote areas of its territory, higher poverty levels exist. Almost 75 percent of Sacred Wind's customers participate in the FCC's Tribal Lifeline program. Approximately one-fourth of Sacred Wind's customers reside in small U.S. Department of Housing and Urban Development or Navajo Housing Authority developments and neighborhoods surrounding a Chapter House, with other customers scattered over the greater part of Sacred Wind's 3,200 square mile service territory.

Consistent with the Commission's 2016 and 2018 *Rate-of-Return Reform Orders*,⁷ the

⁵ U.S. Census Bureau, *American Fact Finder*, Selected Economic Characteristics for Navajo CDP, New Mexico (last visited July 17, 2019).

⁶ The Navajo Nation, [An Overview of the Navajo Nation – Demographics](#) (last visited July 17, 2019).

⁷ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016); *Connect America Fund et al.*, WC Docket

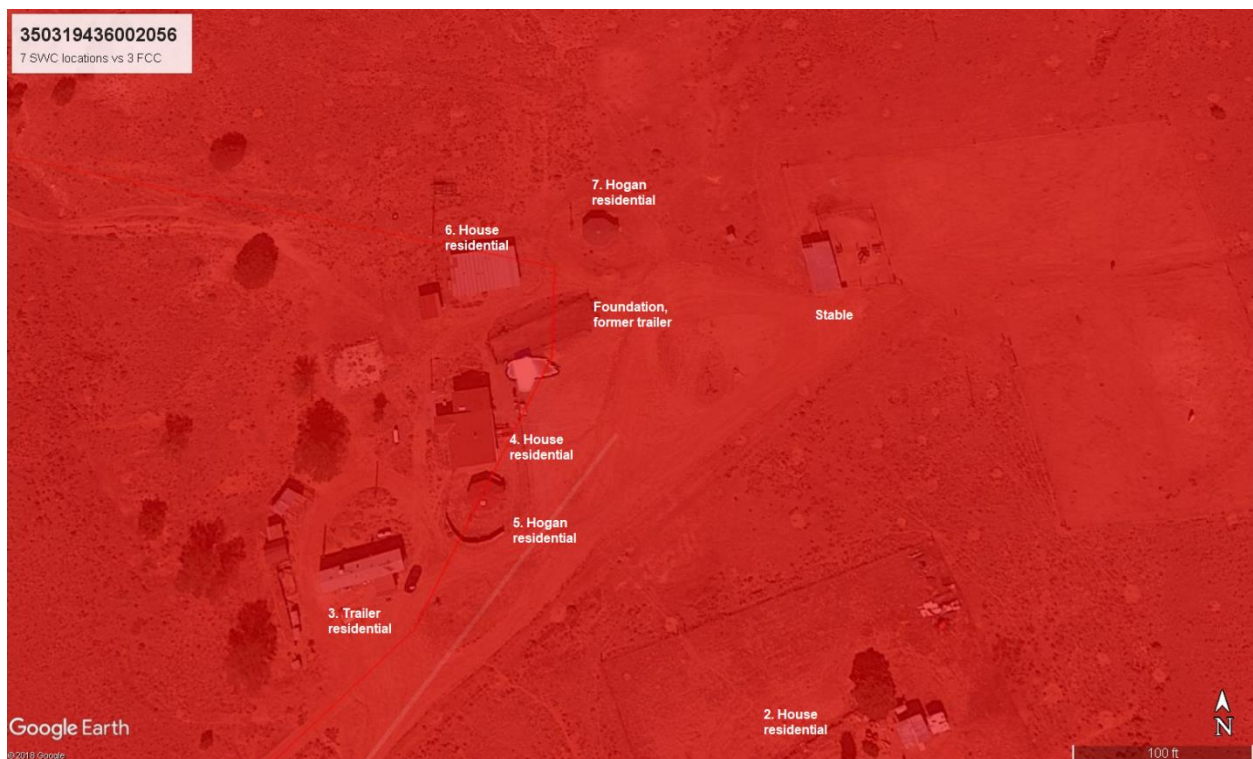
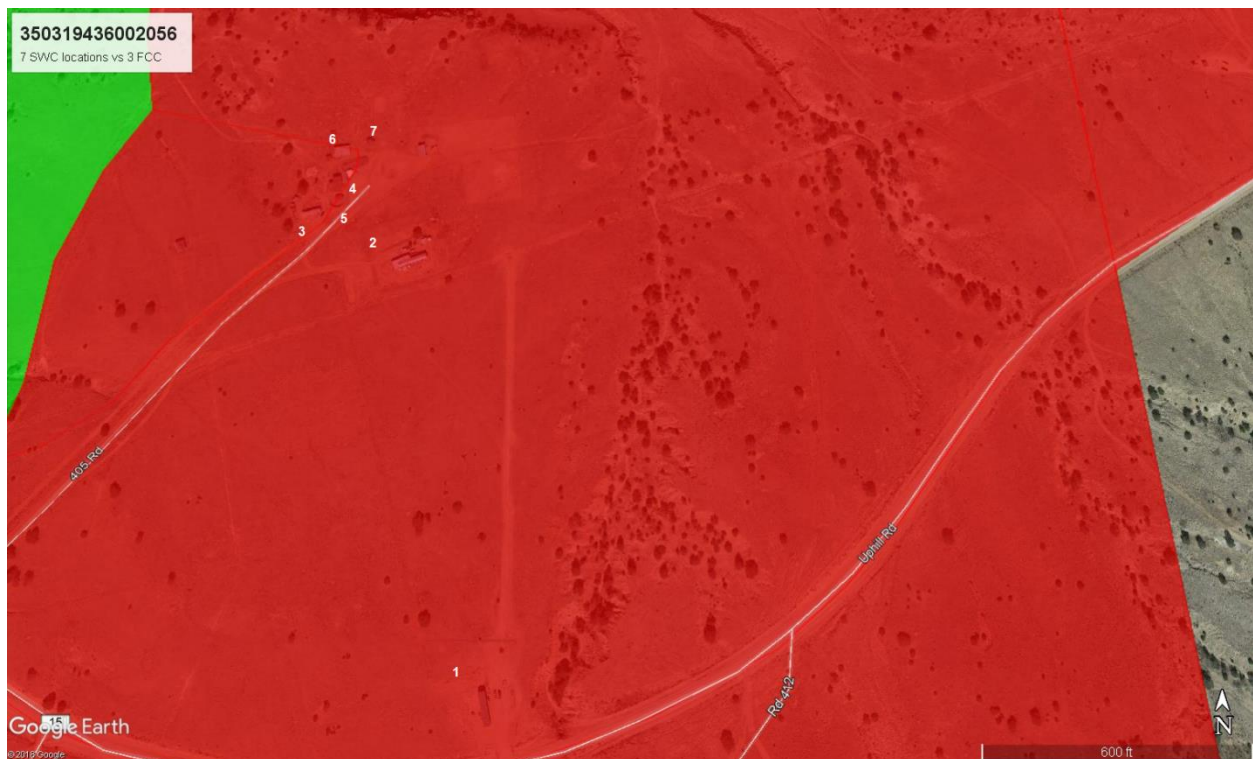
Bureau's A-CAM II offers included performance obligations based on study area boundaries, land area, and U.S. Census housing unit data. Sacred Wind's review of its A-CAM II offer revealed discrepancies with the numbers of funded locations as opposed to study area or land area boundaries. Even when excluding ineligible locations that are not residential or business, Sacred Wind found that, in total, its A-CAM II offer excluded 4,732 locations. Many of these locations, that are residences, fit into the following categories:

- **Navajo Homesite Lease** – a parcel of land assigned by the Navajo Nation to a family or individual of up to one acre with up to three residential locations occupied by relatives of the applicant.
- **BIA Allotment** – a U.S. Department of Interior Bureau of Indian Affairs ("BIA") managed parcel that can be from 2.5 acres to 160 acres, allotted to a Tribal family wherein multiple locations occupied by members of the same family can reside, as authorized by the majority of all family members.
- **Traditional Residential Hogan** – an octagonal or round Navajo residential structure made of timbers or stone or adobe over wood, usually one room for all residential functions, and occupied by one family.
- **Trailer or Other Non-traditional Residential Structure** – a variety of structures, often a trailer or a common wood framed structure, used by low income residents.

Many of these residences are accessible by dirt roads and therefore lack street addresses. Others may be unrecognizable as a traditional residence outside of particular Tribal communities.

Depicted below is a detailed example and close-up of a census block (350319436002056) with discrepancies. Here Commission data listed three eligible locations, whereas Sacred Wind counted seven eligible locations.

Nos. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (rel. Dec. 13, 2018) (together, the "*2016 and 2018 Rate-of-Return Reform Orders*").



The total location discrepancy for Sacred Wind is staggering and may stem from flawed U.S. Census housing unit data. As recently reported by the L.A. Times, a U.S. Census Bureau audit

found that in the 2010 Census nearly 1 in 7 Native Americans living on a reservation was missed, amounting to 82,000 people overlooked and uncounted — “equal to skipping the entire city of Santa Fe, New Mexico’s capital.”⁸

The Navajo People, living on Tribal lands, have a far higher than average percentage of multigenerational families living under one roof or within the confines of a BIA allotment. They also have a far higher than average number of grandmothers raising their grandchildren, and a higher than average concentration of elderly living in the more remote census blocks.⁹ Excluding locations in the very same census blocks, where other locations would be funded, imposes great harm to the most vulnerable people in Tribal and rural New Mexico.

The Commission has previously held that “[c]arriers that discover there is a widely divergent number of locations in their funded census blocks as compared to the model should have the opportunity to seek an adjustment to modify the deployment obligations.”¹⁰ In circumstances where it would be impossible for a carrier to meet its A-CAM I deployment obligations, due to location discrepancies, the Commission directed the Bureau to address discrepancies by adjusting the number of funded locations downward and reducing associated funding levels. Similar action is warranted for upward adjustment where extenuating circumstances have resulted in the wholesale omission of locations in Tribal, rural and remote areas.

Beyond A-CAM II offers being flawed, the omission of residents and businesses from receiving the indispensable essential benefits of high-speed broadband and voice services would

⁸ “The 2020 census is coming. Will Native Americans be counted?” Kurtis Lee & Ben Welsh, Los Angeles Times (June 13, 2019), available at <https://www.latimes.com/projects/la-na-census-native-americans-navajo-nation/> .

⁹ “Demographic Analysis of the Navajo Nation, Using 2010 Census and 2010 American Community Survey Estimates”, Arizona Rural policy Institute, Northern Arizona University, pgs. 28 & 44.

¹⁰ 2016 Rate-of-Return Order at ¶34.

be a grievous public disservice. Excluding locations in the very same census blocks where other locations would be funded imposes great harm to the most vulnerable people in Tribal and rural New Mexico. If the Commission will not permit upward adjustments of A-CAM II offers, then Sacred Wind encourages the Commission to provide A-CAM funding to these excluded locations in Tribal areas in an additional cost model-based mechanism to ensure that the residents in these Tribal, rural and remote locations are included in the Commission's efforts to bridge the digital divide.

Based on the foregoing, Sacred Wind generally supports the proposals in the *CAF-II Locations Public Notice* for A-CAM II location discrepancies but with added areas of flexibility, regarding location data sources and methodologies and timing. Moreover, Sacred Wind urges the Commission to permit the Bureau to revise A-CAM II offers with significant funded location shortfalls or alternatively further extend A-CAM support to excluded Tribal, rural, and remote locations in an additional model-based mechanism.

Respectfully submitted,

SACRED WIND COMMUNICATIONS, INC.

John Badal
President and CEO
Sacred Wind Communications, Inc.
5901 Wyoming NE, Suite J, Box 266
Albuquerque, NM 87110

By: /s/ Robert A. Silverman
Martin L. Stern
Robert A. Silverman
Womble Bond Dickinson (US) LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 467-6900
Attorneys for Sacred Wind Communications, Inc.

Dated: July 19, 2019